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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

12 ENTROPIC COMMUNICATIONS,
13 LLC,

Case No. 2:23-cv-1043-JWH-KES
(Lead Case)

14 Plaintiff,

15 v.

16 DISH NETWORK
17 CORPORATION, *et al.*,

Defendants.

**MAXLINEAR, INC. AND
MAXLINEAR COMMUNICATIONS
LLC'S OPPOSITION TO DISH
NETWORK CALIFORNIA SERVICE
CORPORATION'S *EX PARTE*
APPLICATION TO EXTEND TIME
TO AMEND AND/OR RESPOND TO
MAXLINEAR'S MOTION TO
DISMISS COUNTER-CLAIMS**

Judge: Hon. John W. Holcomb

18 DISH NETWORK CALIFORNIA
19 SERVICE CORPORATION,

20 Counter-Claimant,

21 v.

22 ENTROPIC COMMUNICATIONS,
23 LLC; MAXLINEAR, INC.; AND
MAXLINEAR
COMMUNICATIONS LLC,

24 Counter-Defendants.

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1 **I. INTRODUCTION**

2 Dish Network California Service Corporation (“Dish”) has jumped to the
3 front of the line, demanding *ex parte* relief, only to propose a convoluted schedule
4 to push back a deadline that it proposed. Among the many reasons the Court has to
5 deny this Application, the simplest is the most compelling: there is no fire.

6 Throughout its Application, Dish tries to tiptoe around the elephant in the
7 room—namely, that it seeks *ex parte* relief from the very schedule that *it* proposed
8 (and the Court adopted) back in November 2023. That fact demonstrates that any
9 crisis is of Dish’s own creation. Worse, Dish waited until *after* MaxLinear filed its
10 motion to dismiss to indicate that it would seek *ex parte* relief, conveniently
11 affording itself extra time to address the rather concerning deficiencies in its
12 counterclaims—deficiencies that MaxLinear raised months ago. These are the
13 exact types of *ex parte* applications that are frowned upon in this District.

14 Given that the Application makes no mention of any governing authority on
15 *ex parte* applications, or *any* authority for that matter, Dish unsurprisingly flunks
16 the *Mission Power Engineering* two-prong test.

17 Regarding the first prong of the test, Dish claims, in a single sentence, that it
18 would “suffer prejudice that cannot be remedied through a normally-scheduled
19 motion.” It does not explain the irreparable prejudice that would result from
20 responding to a motion to dismiss. There is none. Dish has known about
21 MaxLinear’s grounds for dismissal since November 15, but initially refused to
22 amend until MaxLinear actually filed its motion. By the time it responds, Dish will
23 have had over eight weeks to attempt to cure its counterclaims’ deficiencies. If
24 Dish simply lacks an adequate response to MaxLinear’s motion and cannot amend
25 successfully, that is not “prejudice.” That is a red flag. As MaxLinear told Dish in
26 advance of filing its motion, Dish should dismiss the suit with prejudice.

27 Rather than address prejudice, Dish attempts to sell a story about how this
28 new proposal (unlike its last proposal) will promote efficiency. Dish is wrong. It

1 was Dish that deliberately sought to take Entropic’s briefing schedule off calendar
2 the day before the Court-ordered deadline through a hastily submitted stipulation.
3 Moreover, Dish does not acknowledge that MaxLinear’s motions to dismiss the
4 Dish and Cox counterclaims, both of which focus on the Multimedia over Coax
5 Alliance (MoCA) standard, are set for hearing on February 2, 2024. Therefore, the
6 Court’s guidance on MaxLinear’s motion will hopefully prevent the other Dish
7 defendants from filing equally baseless counterclaims and wasting the Court’s
8 judicial resources.

9 As to the second prong, not only is there no “crisis,” but the situation is also
10 entirely of Dish’s making. If Dish believed that it could only file a counterclaim
11 along with other Dish defendants, then it should not have sued MaxLinear in the
12 first place. And if Dish wanted to wait an indeterminate amount of time to file
13 amended counterclaims with the other Dish defendants, then it should not have
14 proposed a December 22, 2023 filing date for MaxLinear’s response to Dish’s
15 counterclaims. And even then, if it had buyer’s remorse, it had plenty of time to
16 file a regularly-noticed motion. Instead, MaxLinear is now forced to respond to
17 Dish’s *ex parte* application in 24 hours.

18 The circumstances of the instant *ex parte* application are particularly
19 egregious, and further confirm there is no emergency. The day after Christmas, and
20 after having the benefit of reviewing MaxLinear’s motion to dismiss, Dish
21 informed MaxLinear that it intended to file an *ex parte* application by the “end of
22 the week.” Despite the fact that counsel for MaxLinear were taking time off to
23 spend with their families for the holidays, MaxLinear urged Dish to file on
24 Thursday, December 28, rather than Friday, to help reduce the burden on the Court
25 (and counsel’s staff) from a Saturday filing over a holiday weekend. Dish
26 represented it would file on December 28, and multiple MaxLinear attorneys
27 interrupted vacation plans to begin working on the anticipated opposition. Only
28 after close of business on December 28 did Dish say that it would wait to file until

1 Tuesday morning, January 2, as a supposed “courtesy” to MaxLinear. Tuesday
2 morning came and went. No *ex parte*. After repeated probing, and with MaxLinear
3 counsel standing by to oppose the papers, Dish confirmed after 9 p.m. that it would
4 not file on Tuesday evening and that it intended to file on Wednesday morning. It
5 provided no explanation for the delay. Dish’s actions reflect both a lack of courtesy
6 and a lack of urgency.

7 Not only should the Court deny Dish’s *ex parte* application, but also, given
8 the unnecessary fire drills during the holidays and the wasteful use of Court
9 resources, MaxLinear respectfully requests that the Court restrict Dish’s ability to
10 rely on the *ex parte* process in this case.

11 **II. BACKGROUND**

12 **A. Dish Proposed the Current Briefing Schedule From Which
13 It Now Seeks *Ex Parte* Relief**

14 Plaintiff Entropic Communications, LLC (“Entropic”) filed a patent
15 infringement suit against Dish and the other three Dish defendants (DISH Network
16 Corporation, DISH Network LLC, and DISH Network Service, LLC) on
17 February 10, 2023. (ECF No. 1.) In September 2023, Dish filed its answer and
18 counterclaims against Entropic and MaxLinear. (ECF No. 111.) The other Dish
19 defendants moved to dismiss and have not filed counterclaims. (ECF No. 49.)

20 On November 15 and 17, 2023, MaxLinear conferred with Dish and detailed
21 the deficiencies identified in MaxLinear’s motion to dismiss, including the fact that
22 Dish’s contract-based counterclaims rely on a superseded policy found on a third-
23 party blog. (See Declaration of Rose Lee (“Lee”) Declaration, ¶ 2.) Following the
24 parties’ November 17, 2023 meet and confer, MaxLinear asked Dish whether it
25 would amend its counterclaims against MaxLinear. (Lee Decl. Ex. A at 9-10.)
26 Dish refused to do so, stating that it “will make that determination after reviewing
27 the motion to dismiss.” (*Id.* at 9.)

28

1 On November 17, Dish offered to stipulate to a 30-day extension for
2 MaxLinear’s motion to dismiss. For its part, MaxLinear agreed to this extension,
3 not because of supposed efficiencies resulting from joint counterclaims, but because
4 Dish promised it would provide MaxLinear with the applicable MoCA agreement
5 that was conspicuously absent from its counterclaims. In its proposed stipulation,
6 Dish afforded itself nearly two additional weeks to respond to MaxLinear’s motion
7 to dismiss and provided MaxLinear with absolutely no extra time. MaxLinear
8 agreed to this one-sided schedule, ironically, as a courtesy to Dish so its counsel
9 would not have to work over the holidays. (Lee Decl. Ex. A at 5.) On
10 November 22, the Court ordered the existing schedule. (ECF No. 180.)

11 **B. Events Leading Up to MaxLinear’s Motion to Dismiss**

12 After receiving the missing MoCA Promoter Agreement from Dish,
13 MaxLinear wrote to Dish on December 15, 2023, and urged it again to dismiss this
14 lawsuit with prejudice, as there was no good faith basis to continue. (Lee Decl.
15 ¶ 4.) On the evening of December 19—three days before MaxLinear’s filing
16 deadline—Dish offered to extend MaxLinear’s deadline to answer or otherwise
17 respond to Dish’s counterclaims to 21 days after all Dish defendants answered and
18 filed counterclaims. MaxLinear declined, explaining that its motion had already
19 been drafted per the parties’ agreement and Court order, and that it would file the
20 following day. As ordered by the Court, MaxLinear filed its motion on
21 December 22, 2023. (ECF No. 233.)

22 The day after Christmas, on December 26, Dish indicated for the first time
23 that it would seek *ex parte* relief by the “end of the week.” (Lee Decl. Ex. B at 32-
24 33.) Even though its counsel were out for the holidays, MaxLinear urged Dish to
25 file on Thursday, rather than Friday, to reduce the inconvenience to the Court and
26 counsel’s staff from a Saturday filing. Dish agreed to do so, and MaxLinear’s
27 counsel immediately began working on the anticipated opposition. But Dish
28 backtracked after the close of business on Thursday, December 28, and promised to

1 file on Tuesday *morning*, January 2. It did not do so, and, after repeated prodding
2 by MaxLinear’s counsel (who were standing by to work on the opposition brief),
3 Dish disclosed after 9 p.m. that there would be no Tuesday filing. (*Id.* at 24.)

4 **III. DISH FAILS TO MEET THE LEGAL REQUIREMENTS FOR
5 THE GRANT OF AN *EX PARTE* APPLICATION**

6 *Ex parte* motions are “the forensic equivalent of standing in a crowded
7 theater and shouting, ‘Fire!’” *Mission Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F.
8 Supp. 488, 492 (C.D. Cal. 1995). In seeking *ex parte* relief, “[t]here had better be a
9 fire.” *Id.*

10 To make the “rarely justified” *ex parte* application, Dish must demonstrate
11 that (i) it “will be irreparably prejudiced if the underlying motion is heard according
12 to regular noticed motion procedures,” and (ii) it “is without fault in creating the
13 crisis that requires *ex parte* relief, or that the crisis occurred as a result of excusable
14 neglect.” *Id.* at 490, 492; *see also Lum v. Mercedes-Benz USA*, 2012 WL
15 13012454, at *1 (C.D. Cal. Jan. 5, 2012) (“The opportunities for legitimate *ex*
16 *parte* applications are extremely limited.”) (citation omitted); *BCS Bus. Consulting*
17 *Servs. Pte. Ltd. v. Baker*, 2023 WL 6373870, at *1 (C.D. Cal. July 26, 2023)
18 (Holcomb, J.) (finding *ex parte* application “fundamentally flawed, as demonstrated
19 by [Plaintiff’s] failure to discuss or apply *Mission Power* in its Application or to
20 show why it ‘is without fault in creating the crisis that requires *ex parte* relief’”)
21 (quoting *Mission Power*, 883 F. Supp. at 492). Dish has made neither showing.

22 **A. First Prong: Dish Fails to Show that It Will be “Irreparably
23 Prejudiced”**

24 Dish refers to its supposed prejudice only once in its briefing, and that is
25 merely in reference to how long a noticed motion would take. (ECF No. 252 at 7.)
26 But that is not prejudice. *White v. Baca*, 2014 WL 12696910, at *1 (C.D. Cal. Jan.
27 30, 2014) (“Merely showing that deadlines are fast approaching is not enough.”).
28 And the failure to articulate a specific prejudice is reason alone to deny this

1 application. *BCS Bus.*, 2023 WL 6373870, at *1 (“This Court’s Standing Order
2 admonishes parties seeking *ex parte* relief to ‘become familiar with *Mission Power*
3 *Engineering Co.*’”); Standing Order, ¶ 15.

4 Without the requested relief, Dish will have to respond to MaxLinear’s
5 motion or amend its counterclaims. Dish has been on notice of the glaring
6 problems in its counterclaims since November 15, 2023. By the January 12, 2024
7 deadline, Dish will have had over eight weeks to respond to the motion or amend its
8 counterclaims. The fact that Dish is apparently at a loss on how to do so is telling.
9 Judicial scrutiny of a woefully inadequate counterclaim does not prejudice Dish;
10 that scrutiny is necessary to avoid further harassment of MaxLinear.

11 Instead of focusing on irreparable prejudice, Dish focuses much of its
12 Application on purported efficiency grounds. This, of course, is not a basis to grant
13 *ex parte* relief. Crucially, there is no efficiency to be had by delaying the Court’s
14 ruling on MaxLinear’s motion to dismiss. Quite the opposite: the Court’s ruling on
15 MaxLinear’s motion to dismiss Dish’s counterclaims will help dissuade other Dish
16 defendants from filing similarly unsupported counterclaims, thereby saving both
17 judicial and party resources. As MaxLinear demonstrated in its motion to dismiss,
18 Dish has no basis to sue MaxLinear. Dish’s counterclaims will not age like fine
19 wine; they are baseless now and will continue to be.

20 Dish relies heavily on a stipulation with Entropic filed after the close of
21 business on December 22, 2022. (ECF No. 230.) Dish’s last-minute acrobatics to
22 get a self-serving stipulation on file does not change the fact that MaxLinear has
23 presented this Court with a thoughtful motion to dismiss that is noticed for the exact
24 hearing date that Dish itself had proposed. MaxLinear was wrongly brought into
25 this case through woefully insufficient counterclaims; rather than promoting
26 efficiency, Dish seeks to delay MaxLinear’s rightful challenge of Dish’s deficient
27 counterclaims. The Court’s ruling on MaxLinear’s motion may guide Entropic’s
28 motion as well.

1 In all of its talk of “alignment,” Dish neglects to mention that both
2 MaxLinear and Entropic also moved to dismiss Cox’s counterclaims in the CV-
3 1047 action, with the hearing set for February 2, 2024. The CV-1047 action was
4 consolidated with the present action through stipulation of those parties, including
5 Dish, and involves similar counterclaims to those alleged by Dish. (ECF No. 129;
6 *see also* ECF No. 128 at 2 (“WHEREAS, consolidation of the cases would reduce
7 the burden on the Court by: 1) reducing the number of duplicative filings and
8 orders, and 2) reducing the number of separate hearings on procedural and
9 substantive issues the Court must schedule”).) Given that both motions deal with
10 MoCA, it is efficient for these motions to be heard together.

11 While there is no prejudice to Dish, the prejudice to MaxLinear is real.
12 MaxLinear should not be in this lawsuit. And it should not be placed in this never-
13 ending cycle of last-minute extensions while Dish attempts to figure out whether it
14 can muster a colorable claim, and at the same time, bombard MaxLinear with
15 improper discovery demands.¹

16 Dish’s suggestion that a delay makes sense so it can amend is not well-taken.
17 MaxLinear asked Dish on November 17, 2023 if Dish would amend, including for
18 instance, by attaching the purported contract in a contract case, and Dish refused to
19 do so until MaxLinear filed a motion to dismiss. Thus, it is particularly frustrating
20 when Dish now says MaxLinear’s concerns can “be mooted through a
21 straightforward and simple amendment.” MaxLinear has gone through the time and
22 expense to submit a detailed brief. And, contrary to Dish’s representations, time
23 will not moot MaxLinear’s motion. There are a number of deficiencies that are
24

25 ¹ On September 20, 2023, Dish served a subpoena on MaxLinear. Unbeknownst to
26 MaxLinear, Dish also sued it the following day. When Dish refused a courtesy
27 extension absent MaxLinear agreeing to waive all challenges to the subpoena,
28 MaxLinear responded to the subpoena under rushed circumstances. Once Dish had
MaxLinear’s responses to a subpoena in hand, it then revealed it had sued
MaxLinear and served the counterclaims. These antics are exactly why MaxLinear
requests that the Court not allow any further delay.

1 simply not curable. It is time for Dish to stand by its claims, or better yet, do the
2 right thing and dismiss them with prejudice.

3 **B. Second Prong: Dish Is Entirely at Fault for the Current
4 Situation**

5 There is no “crisis.” *Mission Power Eng’g*, 883 F. Supp. at 492. Dish
6 simply needs to respond to a motion or amend its counterclaims, which admittedly
7 would be futile. And that it finds itself in this situation is entirely its own doing.

8 First, Dish is seeking relief from *its own* proposed schedule, and after
9 MaxLinear has already complied. MaxLinear agreed to Dish’s 30-day extension
10 because it sought the Promoter Agreement, which Dish failed to attach to its
11 counterclaims. (See ECF No. 234.) In its proposal, Dish afforded itself nearly two
12 additional weeks to respond to MaxLinear’s motion and provided MaxLinear with
13 no extra time on reply. At no point during MaxLinear and Dish’s discussions
14 regarding the original briefing schedule did Dish raise the possibility of an
15 undetermined extension until after this Court rules on the other Dish defendants’
16 motions to dismiss. As MaxLinear told Dish then, and it continues to believe now,
17 the addition of the additional Dish defendants will not save Dish’s claims. Dish
18 does not point to a single new fact or development that it did not know of when it
19 proposed the current schedule.

20 Second, if Dish had regrets about its proposal, it could have filed a noticed
21 motion weeks ago. It chose not to do so. *See Sofketeers, Inc. v. Regal W. Corp.*,
22 2023 WL 8353786 (C.D. Cal. Feb. 17, 2023) (Holcomb, J.) (denying *ex parte* relief
23 under *Mission Power*, noting that the party could seek relief through routine motion
24 practice, and, if necessary, stipulate or file another *ex parte* to shorten the time on a
25 noticed motion); *In re Intermagnetics Am., Inc.*, 101 B.R. 191, 193 (C.D. Cal.
26 1989) (“*Ex parte* applications are not intended to save the day for parties who have
27 failed to present requests when they should have.”); *Stokes v. All Worlds Resorts,
Inc.*, 2022 WL 3013142 (C.D. Cal. June 9, 2022) (finding applicant was not without

1 fault where it could have—and should have—brought its request sooner); *see also*
2 *Entropic Commc'ns, LLC v. Comcast Corp.*, 2023 WL 4680365 (C.D. Cal. June 26,
3 2023) (Holcomb, J.) (finding *ex parte* relief was not warranted where party sought
4 to continue hearing on motion to dismiss and had an opportunity to respond in the
5 ordinary course). It chose instead to file an *ex parte* application after receiving—
6 and having an opportunity to review—MaxLinear’s motion to dismiss. (Lee Decl.
7 Ex. B at 32-33.)

8 **C. Dish Should Not Have Filed This *Ex Parte* Application**

9 As courts in this District have repeatedly said, *ex parte* relief is rare, and
10 litigants should exercise care when filing such applications. *Santos v. TWC Admin.*
11 *LLC*, 2014 WL 12703021, at *1 (C.D. Cal. Sept. 15, 2014) (“An *ex parte*
12 application is a means of obtaining extraordinary relief and is appropriate in only
13 rare circumstances.”).

14 Dish yelled “Fire!” over the holidays, causing MaxLinear to scramble.
15 Repeatedly. And when it finally did file this *ex parte* application, it did not answer
16 the hard questions: What is the urgency? Why did it not file such a motion back in
17 November or December? Why did it wait for MaxLinear to file its motion to
18 dismiss per the Court Order before Dish said it would seek *ex parte* relief? If the
19 issue is so urgent, why could Dish not get its Application on file on December 28 or
20 January 2, as promised? This is a misuse of the *ex parte* process, particularly after
21 MaxLinear generously afforded Dish until January 12, 2024 to respond to its
22 motion to dismiss because of the holidays.

23 More importantly, such improper applications put a strain on the judicial
24 system. Courts must drop other matters because of a supposed fire, and litigants are
25 deprived of the fair opportunity to brief issues. MaxLinear respectfully requests
26 that the Court restrict Dish’s ability to file such applications in the future.

27
28

1 **IV. CONCLUSION**

2 MaxLinear endured a week of a threatened *ex parte* filing during the
3 holidays. Now that Dish has finally filed, its Application confirms what MaxLinear
4 told Dish already: there is no justification for filing an *ex parte* application to
5 modify a Court order that Dish itself proposed. This entire episode is particularly
6 frustrating as Dish raised the prospects of an *ex parte* only ***after*** MaxLinear had
7 already adhered to the schedule that Dish proposed.

8 If Dish wanted to modify the Court schedule, it could have filed a regularly
9 noticed motion long ago and sought such relief—rather than engaging in litigation
10 antics to avoid scrutiny of its pleading. MaxLinear asks that the Court send a clear
11 message to Dish on the use of the *ex parte* process in this District.

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1 Dated: January 4, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Counter-Defendants MAXLINEAR, INC. and MAXLINEAR COMMUNICATIONS LLC, certifies that this brief contains 3,163 words, which complies with the word limit of L.R. 11-6.1.

Dated: January 4, 2024

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